



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------|------------------------|
| 10/824,964 | 04/15/2004 | G. Ian Rowlandson | 140822IT (5024-00138) | 7468 |
| 7590 Joseph D. Kuborn Andrus, Scales, Starke & Sawall, LLP Suite 1100 100 East Wisconsin Avenue Milwaukee, WI 53202-4178 | | | EXAMINER MORALES, JON ERIC C | |
| | | | ART UNIT 3766 | PAPER NUMBER |
| | | | MAIL DATE 01/07/2008 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/824,964

Applicant(s)

ROWLANDSON ET AL.

Examiner

Jon-Eric C. Morales

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-19 is/are allowed.
- 6) ☒ Claim(s) 1-14 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim objections regarding claims 1, 6, 10 and 20 have been withdrawn in light of amendments to the claims.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6-7, 9-13 and 20 are rejected under 35 U.S.C. 102 (b) as being anticipated by Franco et al. (US Patent 6458086). Regarding claims 1, 6, 9-10, and 20, Franco discloses acquiring non implant cardiac data from a patient with a non-implant sensor device (external ECG sensors 212) and the data is sent to an analysis module 216 (column 5 lines 65-67, column 6 lines 8-10). Franco discloses acquiring implant cardiac data from an electronic cardiac implant (implanted cardiac wall motion 22 and blood flow sensors 100), both not coupled to the non-implanted ECG sensors (column 5 lines 3-4). The implant cardiac data is sent to an analysis module 16 (column 5 lines 27-30). The non-implant and implant data is then synchronized and correlated to determine and monitor the condition of the patient (column 3 lines 42-48, column 6 lines 10-14). The output of a signature pattern is displayed on an external monitor to be used for treatment of the patient and stored (column 6 lines 23-26, 59-67). With respect to claims 2 and 11, the non-implant (ECG) and implant cardiac (cardiac blood flow, cardiac wall

motion) data is selected to be correlated (column 5 lines 3-4, 65-67). Regarding claims 3-4 and 12-13, a time stamp is used on the non-implant (ECG) and implant (blood flow) data and the non-implant and implant data is time-synchronized (column 6 lines 12-14, column 7 lines 23-25). With respect to claim 7, Franco discloses comparing the signature pattern with patient data to determine the effectiveness of a current treatment (column 3 lines 58-60).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franco et al. (US Patent 6458086) as applied to claims 1 and 10, and further in view of Shimoni (US Patent No. 4616333). Franco substantially discloses the invention as claimed, however does not show alignment of non-implant and implant cardiac data to at least one fiducial point. Shimoni discloses a method that obtains a first set of values dealing with data (any form of data) with a certain number of points, then obtaining a second set of data (any type of data) with the same number of points as the first set, the selecting a subset of data points. Then selecting a fiducial value within the first data set and another fiducial point in the subset. These values are used as points for alignment with use of a calculation with the first set and the subset data points (column 2 lines 63-

68 column 3 lines 6-13). Therefore it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the method of Franco by adding the calculation process of two data sets with use of a fiducial point as a marker as taught by Shimoni in order to facilitate an alignment and correlation of two data sets.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franco et al. (US Patent 6458086) as applied to claim 1 and further in view of Peel, III (US 6647287). Franco discloses the invention substantially as claimed however does not show comparing a signature pattern to determine the effectiveness of a current treatment and a display monitor. Peel, III discloses a display monitor to show representations of any of the patient data. The data provided can include any of the implantable blood pressure sensors or ECG data (column 29 lines 36-39). The disclosed display monitor is to visually assist in the diagnosis of the condition and effects of the treatments for a patient. Peel, III discloses a selection of choices, including ECG data, plethysmograph, and any one of the pulse oximeter measurements for use in the mathematical models (column 34 lines 33-37). Therefore it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the device of Franco by adding a display monitor as taught by Peel, III in order to facilitate visualization and diagnosis of patient's cardiac data and the effectiveness of the treatment provided.

Allowable Subject Matter

7. Claims 15-19 are allowed.

8. The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 15 that states a patient monitoring system for analyzing data including a data acquisition module that acquires non-implant cardiac data from the patient, wherein the data acquisition module is no coupled with the receiver has not been disclosed or suggested in the prior art when combined with the rest of the limitations of claim 15

Response to Arguments

9. Applicant's arguments with respect to claims 1-14 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Application/Control Number:
10/824,964
Art Unit: 3766

Page 6

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon-Eric C. Morales whose telephone number is 571-272-3107. The examiner can normally be reached on Monday through Friday from 8am - 5pm EST.

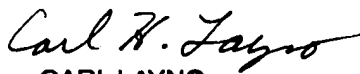
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jon-Eric Morales
/Jon-Eric Morales/
Patent Examiner
Art Unit 3766

JEM

Carl Layno
Supervisory Patent Examiner
Art Unit 3766


CARL LAYNO
PRIMARY EXAMINER